

REMARKS

Upon entry of the foregoing amendment, claims 1, 3 and 19 are pending in this application. Claims 2, 5, 9 and 10 have previously been canceled. Claims 4 and 6-18 are newly canceled herein. Applicants reserve the right to pursue claims directed to the canceled subject matter in a continuing or divisional application. Claims 1, 3 and 19 are under examination.

Claim 1 is currently amended herein. Claim 1 has been amended to recite the word “calculated” in response to a rejection under 35 U.S.C. § 112, second paragraph, set forth by the Examiner in the previous Office Action. Support for the amendment to claim 1 is found, for example, on page 11, lines 10-32 through page 12, line 5, disclosing the amino acid sequence is deduced from the open reading frame. It is believed no new matter has been introduced by this amendment and entry is respectfully requested. The amendments are being made to put the claims in condition for allowance, or, in better form for appeal.

Rejoinder

Applicants have canceled, without prejudice or disclaimer, claims 17 and 18. In view of the cancellation of rejoined claims 17 and 18, and cancellation of the withdrawn claims, claims 1, 3 and 19 remain pending.

Objections to the claims under 37 C.F.R. § 1.75

At page 4 of the Office Action, the Office objects claim 17 under 37 C.F.R. § 1.75 as being a substantial duplicate of claim 18. Claim 17 has been canceled (See, above). In view of the cancellation of claim 17, it is believed the objection may be withdrawn.

At page 4 of the Office Action, the Office advises that should claims 17 and 18 be found allowable, claim 18 is objected to under 37 C.F.R. § 1.75 as being a substantial duplicate thereof. Claim 18 has been canceled (See, above). In view of the cancellation of claim 18, it is believed the objection may be withdrawn.

Rejections**Rejection of claims 17 and 18 under 35 U.S.C. § 112, first paragraph**

At page 4 of the Office Action, the Office rejects claims 17 and 18 under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. The rejection is respectfully traversed. Without acquiescing to the position of the Office, claims 17 and 18 have been canceled without prejudice or disclaimer. As such, withdrawal of the rejection is requested.

Rejection of claims 1 and 3 under 35 U.S.C. § 112, second paragraph

Claims 1 and 3 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The rejection is respectfully traversed.

The Office asserts the recitation of “molecular weight” is vague and indefinite. However, contrary to the position of the Office, it is well known to those of ‘ordinary skill in the art’ that the approximate molecular weight of a peptide/protein can be determined by a variety of methods, including calculation based upon the peptide/protein sequence composition. The Office is reminded that (MPEP 2164.05(a)):

The specification need not disclose what is well-known to those skilled in the art and preferably omits that which is well-known to those skilled and already available to the public. *In re Buchner*, 929 F.2d 660, 661, 18 USPQ2d 1331, 1332 (Fed. Cir. 1991); *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1384, 231 USPQ 81, 94 (Fed. Cir. 1986), cert. denied, 480 U.S. 947 (1987); and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1463, 221 USPQ 481, 489 (Fed. Cir. 1984).

The state of the art existing at the filing date of the application is used to determine whether a particular disclosure is enabling as of the filing date and Applicants assert the molecular weight

of the peptide is easily calculated by one of ordinary skill in the art using any well known physical technique, including estimation based on amino acid composition. Nevertheless, claim 1 has been amended to recited the term "calculated." Thus, in view of the discussion above and amendment to claim 1, reconsideration and withdrawal of the rejection is respectfully requested.

Conclusion

The foregoing amendments and remarks are being made to place the application in condition for allowance. Applicants respectfully request reconsideration and the timely allowance of the pending claims. A favorable action is awaited. Should the Examiner find that an interview would be helpful to further prosecution of this application, the Examiner is invited to telephone the undersigned at her convenience.

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of times fees, or credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

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